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The Scope of Recreational Use Statutes: The Iowa View

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The Scope of Recreational Use Statutes: The Iowa View

-by Neil E. Harl*

In a sharply divided court opinion, the Iowa Supreme Court in early 2013 decided a case, *Sallee v. Stewart*,¹ which clarifies the situations in which the recreational use statute in that state can be invoked. The trial court holding had been upheld on appeal to the Iowa Court of Appeals but was reversed by the state's highest court. The facts of the controversy were that kindergartners from a private school for many years had visited a local farm to learn about life on the farm. On the day in question, the owners of the farm had set up three stations for the students – (1) at one station the students rode a horse in a round pen; (2) at the second station, the students fed a bottle of milk to a young calf; and (3) at the third station, the kindergartners could view a tractor. The owners of the farm then guided the group to a barn to allow the students to play in the hayloft. A chaperone, accompanying the group, was injured when she fell through a hole in the floor which had been covered with hay bales. The injured chaperone sued the owners of the farm for negligence.² The defense was that Iowa's recreational use statute shielded the owners from liability.³

The Iowa statute

The Iowa recreational use statute, enacted in 1967, provided as follows at the time of the accident as to the *purpose* of the provision—

“The purpose of this chapter is to encourage private owners of land to make land and water areas available to the public for recreational purposes by limiting an owner's liability toward person's entering onto the owner's property for such purposes.”⁴

The statute defined recreational purpose as follows –

“Recreational purpose means the following or any combination thereof: Hunting, trapping, horseback riding, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, motorcycling, nature study, water skiing, snowmobiling, other summer and winter sports, and viewing or enjoying historical, archaeological, scenic, or scientific sites while going to and from or actually engaged therein.”⁵

The question came down to whether playing in a hayloft is a covered recreational use. It was important to note that the Iowa statute specifically identified the recreational uses covered by the provision and did not contain language (which was included in many states' statutes and was in the Model Act) stating that the recreational purpose statute “includes but is not limited to” the language of the Model Act's definition of recreational purpose.

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The majority opinion

The majority opinion held that the chaperone's injuries were not incurred while engaged in an activity covered by the Iowa recreational use statute so the landowners were not relieved from the duty of care owed to invitees under the common law rules of long standing. Those common law rules require a higher duty of care than for injuries suffered by trespassers or licensees. Invitees are those who are invited onto the premises and are owed a duty to search out possible sources of harm to the invited guest. The protection under the recreational purpose provision is limited, according to the majority opinion, to involvement in those activities expressly included in the recreational use statute.⁶

The majority view, which was the opinion of the court, was that the recreational use statute includes structures and buildings but only as the structures and buildings relate to their use for outdoor recreational activities. If a visitor on the property in an indoor activity is not "incidental" to a protected outside activity, it likely does not come within the protection of the recreational use statute.⁷

It is important to note that the majority opinion does not render the recreational use statute useless or irrelevant as some have assumed. Many recreational activities clearly come within the recreational purpose definition and enjoy protection from the level of liability contemplated by the common law. The case should be viewed as providing clarification on a number of important issues and serves as guidance to how recreational activities can be conducted in Iowa without losing the exemption from the Iowa statute. Thus, it is vital that landowners become aware of the scope of the Iowa statute and plan and conduct their recreational activities within the bounds of the 2013 decision unless and until further change is made by the Iowa General Assembly.

Minority views

Two justices dissented and a third offered a concurring opinion. The dissenters would have approved recreational use coverage for the injured party.

Situations in other states

The effect of the opinion in the Iowa case, if the analysis is followed elsewhere, will depend heavily upon the language in each state's recreational use statute.

ENDNOTES

¹ 827 N.W.2d 128, 2013 Iowa Sup. LEXIS 14 (Iowa 2013).

² *Id.*

³ *Id.*

⁴ Iowa Code § 461C.1 (2009).

⁵ Iowa Code § 461C.2(5) (2009).

⁶ Iowa Code § 461C.2(5) (2009).

⁷ Iowa Code § 461C.2(5) (2009).

AGRICULTURAL TAX SEMINARS

by Neil E. Harl

On the back cover, we list the agricultural tax seminars coming up in the spring of 2013. Here are the dates and cities for the seminars later this summer and fall 2013:

August 28-29, 2013 - Quality Inn, Ames, IA

September 9-10, 2013 - Honey Creek Resort, Moravia, IA

September 16-17, 2013 - Courtyard Marriott, Moorhead, MN

September 19-20, 2013 - Ramkota Hotel, Sioux Falls, SD

October 3-4, 2013 - Holiday Inn, Council Bluffs, IA

October 10-11, 2013 - HomeRidge Inn, Bettendorf, IA

November 7-8, 2013 - Hilton Garden Inn, Indianapolis, IN

November 14-15, 2013 - Parke Hotel, Bloomington, IL

November 18-19, 2013 - Clarion Inn, Mason City, IA

Each seminar will be structured the same as the seminars listed on the back cover of this issue. More information will be posted on www.agrilawpress.com and in future issues of the *Digest*.

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